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**UNITED STATES DISTRICT COURT**  
**DISTRICT OF OREGON**  
**PORTLAND DIVISION**

**MOE FARHOUD, STARK FIRS LIMITED  
PARTNERSHIP, ALDER VILLAGE, INC.,  
STAR KREST, INC., ASH STREET  
COURTYARD LLC, TYLER SHERMAN,  
and CRYSTAL SHERMAN,**

Plaintiffs,

v.

**GOVERNOR KATE BROWN, in her  
official capacity; STATE OF OREGON;  
CITY OF PORTLAND, an Oregon  
municipal corporation; and  
MULTNOMAH COUNTY OF OREGON,  
an Oregon municipal corporation,**

Defendants.

**Case No. 3:20-cv-02226-JR**

**DEFENDANT CITY OF PORTLAND'S  
RESPONSE TO PLAINTIFF'S  
OBJECTIONS TO FINDINGS AND  
RECOMMENDATIONS**

Defendant City of Portland ("the City") responds to Plaintiffs' Objections to Findings and Recommendation (the "Objections," ECF 58) to Magistrate Judge Russo's Findings and Recommendations, (the "F&R"), entered July 26, 2021 (ECF 54). Specifically, the City asks the Court to adopt the F&R's conclusion that Plaintiffs' claims against the City are moot.

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## **MEMORANDUM OF LAW**

### **I. INTRODUCTION**

Plaintiffs did not object to the F&R's recommendation that this Court find Plaintiffs' claims against the City moot. Because Plaintiffs' claims against the City are moot, this Court lacks jurisdiction to delve into the merits of these claims. For the reasons correctly set forth in the F&R, and discussed briefly below, the Court should adopt the F&R, and dismiss Plaintiffs' claims against the City.

### **II. ARGUMENT**

This Court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate." 28 U.S.C. § 636(b)(1). If a party objects, "the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." *Id.*; Fed. R. Civ. P. 72(b)(3). However, "[t]here is no indication that Congress, in enacting [the Act], intended to require a district judge to review a magistrate's report to which no objections are filed." *Thomas v. Arn*, 474 U.S. 140, 152 (1985) *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc) (holding that the court must review de novo magistrate judge's findings and recommendations if objection is made, "but not otherwise").

Magistrate Judge Russo granted the City's motion to dismiss because the City Ordinances "that form the basis of plaintiffs' claims have expired or been repealed, and because plaintiffs have not offered any evidence that they are likely to be reenacted." (F&R, ECF 54, at 13). Plaintiffs challenge two City Ordinances (Ordinance 189890 and Ordinance 190156), which have been expired for months. (Pls.' Resp., ECF 32, at 12). Plaintiffs acknowledge in the Objections that "[courts] should presume that the repeal . . . of legislation will render an action challenging the legislation moot, *unless there is some reasonable expectation that the legislative body will reenact the challenged provision or one similar to it.*" (ECF 58, at 3 (quoting *Bd. Of*

*Trustees of Glazing Health & Welfare Tr. v. Chambers*, 941 F.3d 1195, 1199 (9th Cir. 2019)). But at no point do Plaintiffs contend that there is anything that would support a “reasonable expectation” that the City will reenact eviction moratorium ordinances. And the City has not taken any action related to evictions since the expiration of the City’s eviction moratorium in February. Further, Plaintiffs appear to recognize that their claims against the City are moot, as they do not object to that part of the F&R. Rather, Plaintiffs only argue that the F&R was incorrect in concluding that the claims against the *County* were moot and in concluding that Plaintiffs lacked standing against *Defendant Brown*. (See ECF 58).

Without argument or analysis, Plaintiffs also generally object to Magistrate Judge Russo’s decision to “address[] the narrowest possible grounds, failing to discuss the merits of any of Plaintiffs’ claims.” (ECF 58, at 2-3). Plaintiffs assert that their “claims should be fully explored and adjudicated [on the merits] by this Court and should not have been summarily dismissed at such a preliminary stage.” (*Id.*). Plaintiffs’ request for this Court to review the merits of their claims, despite the absence of a justiciable claim against the City is beyond the scope of this Court’s jurisdiction. “[A] federal court has no authority to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it.” *Church of Scientology of California v. U.S.*, 506 U.S. 9, 12 (1992) (citations and internal quotation marks omitted); see also *League of Conservation Voters v. Biden*, 843 F. App’x 937, \* 938-99 (9th Cir. 2021) (noting that the court lacked jurisdiction to consider an issue arising from a Presidential Executive Order that had been revoked); *Oregon Wild, v. Constance Cummins*, 239 F. Supp. 3d 1247, 1261-63 (D. Or. 2017) (“A federal court lacks jurisdiction to decide a moot claim.”).

Plaintiffs do not object to F&R’s conclusion that their claims against the City are moot. Because they are moot, this Court lacks jurisdiction to address the merits of Plaintiffs’ claims against the City.

### III. CONCLUSION

For these reasons, the City respectfully requests that the Court adopt Magistrate Judge Russo's Findings and Recommendations and dismiss Plaintiffs' claims against the City.

DATED: September 17, 2021.

Respectfully submitted,

*/s/ Naomi Sheffield*

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